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DISPENSE AS WRITTEN LAWS IN OTHER STATES

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You asked for a summary of the “dispense as written” drug laws in the New England states, New Jersey, and New York.

SUMMARY

All the New England states, New Jersey, and New York have “dispense as written” drug laws that require pharmacists to dispense a specific brand name drug if a practitioner (i.e., doctor or dentist) expressly indicates there should be no drug substitution or something to that effect. States differ in what they require practitioners to communicate to pharmacists, ranging from initialing to writing specific phrases on the prescription.

All of these states allow or require generic drugs to be substituted if the practitioner does not expressly prohibit them. Connecticut and New Hampshire allow pharmacists to make substitutions, while Maine, Massachusetts, New Jersey, New York, Rhode Island, and Vermont require pharmacists to make substitutions if certain requirements are met, such as costing less.

CONNECTICUT

Connecticut law allows pharmacists to substitute a generic drug of the same strength, quantity, dose, and dosage form as the prescribed drug that is, in the pharmacist's professional opinion, therapeutically equivalent ([CGS § 20-619\(b\)](#)). Pharmacists may only make substitutions when there are savings and they must disclose the amount of the savings at the patient's request ([CGS § 20-619\(e\)](#)).

But the law allows practitioners to specify in writing, by telephone, or other electronic means that there must not be any generic substitution for the brand-name drug, provided (1) in any Medicaid prescription, state-administered general assistance, or ConnPACE recipient, the practitioner specifies that the brand name drug and dosage form is medically necessary compared to the generic substitution and (2) the phrase "BRAND MEDICALLY NECESSARY" is in the practitioner's handwriting on the prescription form ([CGS § 20-619\(c\)](#)). If the prohibition was communicated by telephone or other electronic communication that did not reproduce handwriting, a statement to the effect must appear on the form. The phrase "BRAND MEDICALLY NECESSARY" cannot be preprinted, stamped, or initialed on the prescription form.

Each pharmacy must post a sign in a place that is easily seen from where the prescriptions are dispensed stating "THIS PHARMACY MAY BE ABLE TO SUBSTITUTE A LESS EXPENSIVE DRUG PRODUCT WHICH IS THERAPEUTICALLY EQUIVALENT TO THE ONE PRESCRIBED BY YOUR DOCTOR UNLESS YOU DO NOT APPROVE." The sign must be in block letters not less than one inch in height ([CGS § 20-619\(d\)](#)).

When pharmacists dispense a generic drug, they must label the prescription with the name of the dispensed drug. If it does not have a brand name, the label must indicate the generic name along with the name of the drug manufacturer or distributor ([CGS § 20-619\(f\)](#)). A prescription a pharmacist dispenses must have on the label the name of the drug in the container, unless the practitioner writes "DO NOT LABEL," or something similar on the prescription or does so orally or electronically ([CGS § 20-619\(g\)](#)).

Before pharmacists make a substitution, they must notify the patient and the patient may indicate that he or she does want the substitution (Conn. Agencies Regs. § 20-576-28). Connecticut regulations also require pharmacists to record every time they substitute a brand name drug for a generic one (Conn. Agencies Regs. § 20-576-29).

MAINE

Maine law requires pharmacists to substitute a generic drug when practitioners do not explicitly prohibit it (Me. Rev. Stat. Ann. Tit. 32, § 13781).

In Maine, a prescription form may contain a box in the lower right-hand corner. The following statement must appear to the left of this box: “Any drug which is the generic and therapeutic equivalent of the drug specified above in this prescription must be dispensed, provided that no check mark () has been handwritten in the box in the lower right-hand corner.” Practitioners that do not have the box can handwrite on the prescription form next to their signature, “dispense as written,” “DAW,” “brand,” “brand necessary,” or “brand medically necessary.”

Except when patients are paying for the drug themselves, pharmacists that do not receive direct instructions from practitioners prohibiting substitution, must substitute a generic drug if the drug meets certain requirements. The drug must, among other things, be distributed by a business in the United States and be less expensive than the original drug.

For patients who pay for the drugs themselves, pharmacists must ask about their preference for the brand-name or generic drug, and dispense the drug the patients prefer.

Maine law requires pharmacists who substitute a generic drug to inform the patient of the substitution. When they make a substitution, they must put the name of the generic drug, the name or abbreviation of the drug manufacturer or distributor of the substitute drug on the container.

MASSACHUSETTS

Massachusetts law requires pharmacists to dispense a less expensive, reasonably available, interchangeable drug product if the practitioner has not indicated “no substitution” (Mass. Gen. Laws ch. 112, § 12D).

If the practitioner specifically indicates “no substitution” on the prescription, the pharmacist must dispense the exact drug as indicated. The “no substitution” standard is not the default and the prescription will indicate that the “[i]nterchange is mandated unless the practitioner indicates ‘no substitution’ in accordance with the law.”

When pharmacists use the generic drug, they must indicate on the label the following: “Interchange (name of exact drug product dispensed).”

If a pharmacist or practitioner does not comply, the drug purchaser or patient may inform the director of consumer affairs and business regulation of such noncompliance. The director must then refer the matter to the Board of Registration in Pharmacy and, if appropriate, to the Board of Registration in Medicine, for appropriate action.

NEW HAMPSHIRE

New Hampshire law allows pharmacists to substitute generically equivalent drugs, unless the prescribing practitioner handwrites “medically necessary” on each paper prescription, or electronically indicates or gives oral instructions that the brand name drug is medically necessary (N.H. Rev. Stat. Ann. § 318:47-d).

The pharmacist may, when dispensing a generic drug, include the brand name on the prescription label following the generic name. The brand name, must be preceded or followed by the word “sub,” indicating substituted for, or “I.C.” indicating interchanged for or “generic for” (N.H. Code Admin. R. Ann. PH 704.06).

NEW JERSEY

New Jersey law requires pharmacists to substitute a less expensive generic drug if it is on the latest interchangeable drug product list published by the state Department of Health, unless the practitioner has indicated otherwise. The practitioners must state that there must be no substitution when transmitting an oral prescription and they must initial next to the “do not substitute” blank on written prescriptions. Every prescription must be imprinted with the words, “substitution permissible” and “do not substitute” and contain space for the prescriber’s initials next to the chosen option. State law also sets out the procedure and allows practitioners to indicate a substitution is allowed if they are notified (N.J. Stat. Ann. § 24:6E-7).

New Jersey also has a procedure for allowing drugs to be substituted that are not on the interchangeable drug product list. The pharmacist may make a substitution, with the prescriber’s permission, of a drug that is not on the list if (1) it is available at a lower cost and the pharmacist believes that there is no valid proof of efficacy for the prescribed drug; (2) the pharmacist’s patient profile record reveals drug sensitivity, allergies, or adverse reactions to the prescribed drug, or (3) there is a more

appropriate drug. When pharmacists make this type of substitution, they must indicate on the prescription the date and time of the prescriber's approval and whether the communication was oral or written (N.J. Stat. Ann. § 24:6E-8).

When a generic drug is dispensed, the pharmacist must include on the drug label, the name of the brand name drug and the name of the generic drug. The information required must be in the following form, with the generic name and brand name inserted as appropriate: "----- Generic for -----" (N.J. Stat. Ann. § 24-6E-9).

Anyone selling prescription drugs must post a sign, at the entrance to the place where the prescriptions are sold, disclosing that upon request and before a prescription is dispensed, the purchaser must be told (1) the drug's price, (2) whether it is to be substituted from a list of interchangeable drug products, (3) of his or her right to be informed of the price savings from the substitution, and (4) that the prescribed drug can be dispensed if he or she is not satisfied with the price savings. The sign must be at least 12 inches by 12 inches (N.J. Stat. Ann. § 24-6E-10).

NEW YORK

New York law requires a pharmacist to substitute a generic drug under certain conditions, including the following:

1. The prescription is written on a proper form and the prescriber does not prohibit the substitution. In the case of oral prescriptions, the prescriber must expressly state whether substitution is permitted or prohibited. The pharmacist cannot fill any oral prescription that does not indicate an express statement.
2. Any substituted drug must be on the list of drugs approved by the state Department of Health.
3. The pharmacist must (a) indicate on the drug label, the name, strength, and drug manufacturer, unless the prescriber specifically states otherwise; and (b) record on the prescription the brand name or the drug manufacturer's name (N.Y. Educ. Law § 6816-a).

RHODE ISLAND

Rhode Island law requires pharmacists to dispense substitute drugs containing all the same active chemical ingredients of the same strength, quantity, and dosage form as the drug prescribed, unless the practitioner specifically states that a brand name drug is necessary, whether in writing or orally (R.I. Gen. Laws § 5-19.1-19).

When dispensing a substitute drug, the pharmacist will select from approved prescription drug products and pass the savings to the patient. The pharmacist must indicate the product dispensed on the written prescription, an oral prescription that has been written down, or maintain product information on a computerized system.

VERMONT

Vermont law requires pharmacists to select the lowest priced drug from the list defined by the “Orange Book,” which is the federal U.S. Department of Health and Human Services’ publication of Approved Drug Products with Therapeutic Equivalence, unless otherwise instructed by the prescriber or purchaser. The purchaser can agree to pay any additional cost in excess of the benefits provided by his or her health plan or to pay the full cost of the higher priced drug (VT. Stat. Ann. Tit. 18, § 4605(a)).

If the prescriber determines that the generic drug has not been effective or is reasonable certain is not expected to be effective or will cause adverse or harmful reactions, the prescriber must indicate in his or her own handwriting on the prescription, “brand necessary,” “no substitution,” “dispense as written,” or “DAW.” The prescriber can also expressly indicate to the pharmacist that the brand-name drug is necessary and that no substitutions are allowed (VT. Stat. Ann. Tit. 18, § 4606).

The pharmacist must inform the purchaser that an alternative selection will be made unless the purchaser agrees to pay any additional costs (VT. Stat. Ann. Tit. 18, § 4605(b)). For refills, the pharmacist must (1) receive the prescriber’s consent to dispense a drug that is different from the original and (2) inform the purchaser of a generic substitution unless the purchaser agrees to pay any additional costs (VT. Stat. Ann. Tit. 18, § 4605(b)).

Any pharmacist substituting a generic drug can charge no more than the usual retail price. This charge must be less than the usual retail price for the prescribed brand (VT. Stat. Ann. Tit. 18, § 4605(d)).

The containers of all drugs must indicate the generic name using an abbreviation if necessary, the drug's strength, and the name or number of the manufacturer or distributor (VT. Stat. Ann. Tit. 18, § 4607(b)).

Every pharmacy in Vermont must have in a prominent place, a clear and unobstructed sign that reads: "Vermont law requires pharmacists in some cases to select a less expensive generic equivalent for the drug prescribed unless you or your physician direct otherwise. Ask your pharmacist" (VT. Stat. Ann. Tit. 18, § 4607(a)).

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